PRELIMINARY DRAFT No. 3112

PREPARED BY LEGISLATIVE SERVICES AGENCY 2008 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-1-13-1.5; IC 34-30-2-122.9.

Synopsis: Access to safe deposit boxes. Establishes procedures for obtaining access to a safe deposit box following the death of the individual leasing the safe deposit box.

Effective: July 1, 2008.

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A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1	SECTION 1. IC 29-1-13-1.5 IS ADDED TO THE INDIANA CODE
2	AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3	1, 2008]: Sec. 1.5. (a) Upon the death of an individual, a financial
4	institution shall grant access in the following order of priority to a
5	safe deposit box leased by the individual at the time of the
6	individual's death:
7	(1) A surviving joint lessee of the safe deposit box, upon the
8	presentation of proof of the individual's status as a joint
9	lessee.
10	(2) The personal representative of the individual's estate,
11	upon the presentation of letters testamentary or letters of
12	administration.
13	(3) The personal representative named in the individual's will,
14	upon the presentation of an affidavit meeting the
15	requirements of subsection (c) if a probate estate has not been
16	opened.
17	(4) The successor trustee of the individual's revocable trust,
18	upon the presentation of an affidavit meeting the
19	requirements of subsection (c) if a probate estate has not been
20	opened.
21	(5) Any other individual, upon the presentation of a court
22	order directing access to the safe deposit box.
23	(b) A person granted access to a safe deposit box under
24	subsection (a) may exercise the following rights:
25	(1) The right to open the safe deposit box.
26	(2) The right to remove the contents of the safe deposit box.
27	(3) The right to cancel the lease for the safe deposit box.
28	(c) An affidavit required by subsection (a)(3) or (a)(4) must
29	contain the following information:
30	(1) The name of the individual leasing the safe deposit box and
31	the date of the individual's death.

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1	(2) A statement as to whether the individual died testate or
2	intestate.
3	(3) The name of the county in which the individual was
4	domiciled at the time of the individual's death.
5	(4) A statement that no application or petition for the
6	appointment of a personal representative has been granted or
7	is pending in any jurisdiction.
8	(5) A statement under the penalties of perjury that the affiant
9	is qualified under subsection (a)(3) or (a)(4) to obtain access
10	to the safe deposit box leased by the individual.
11	(d) A financial institution that is presented with a request for
12	access to a safe deposit box by a person described in subsection (a):
13	(1) shall grant access to the safe deposit box within three (3)
14	business days of the presentation of the appropriate
15	documentation required by subsection (a); and
16	(2) is liable to the estate of the individual leasing the safe
17	deposit box if it fails to grant access to the safe deposit box
18	within three (3) business days of the presentation of the
19	appropriate documentation required by subsection (a).
20	(e) A financial institution that provides access to a safe deposit
21	box under this section is discharged and released from liability and
22	responsibility for the assets held in the safe deposit box. The
23	financial institution is not required to:
24	(1) inquire into the truth of any statement in an affidavit
25	presented under this section; or
26	(2) participate in the disposition of the assets held in the safe
27	deposit box.
28	(f) A plaintiff who prevails in an action:
29	(1) to compel a financial institution presented with a request
30	for access to a safe deposit box in accordance with this section
31	to accept the authority of the person requesting access; or
32	(2) for damages arising from a financial institution's refusal
33	to grant the requested access;
34	shall recover the amounts specified in subsection (g).
35	(g) A prevailing plaintiff described in subsection (f) is entitled to
36	the following:
37	(1) Three (3) times the amount of the actual damages.
38	(2) Attorney's fees and court costs.
39	(3) Prejudgment interest on the actual damages calculated
40	from the date that the appropriate documentation was
41	presented to the financial institution under subsection (a).
42	SECTION 2. IC 34-30-2-122.9 IS ADDED TO THE INDIANA
43	CODE AS A NEW SECTION TO READ AS FOLLOWS
44	[EFFECTIVE JULY 1, 2008]: Sec. 122.9. IC 29-1-13-1.5 (Concerning
45	a financial institution granting access to a safe deposit box upon the

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death of an individual).

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